



# UNITED STATES PATENT AND TRADEMARK OFFICE

UNITED STATES DEPARTMENT OF COMMERCE  
United States Patent and Trademark Office  
Address: COMMISSIONER FOR PATENTS  
P.O. Box 1450  
Alexandria, Virginia 22313-1450  
www.uspto.gov

| APPLICATION NO. | FILING DATE | FIRST NAMED INVENTOR | ATTORNEY DOCKET NO. | CONFIRMATION NO. |
|-----------------|-------------|----------------------|---------------------|------------------|
| 10/713,578      | 11/13/2003  | Sanjay Awasthi       | 124263-1006         | 8252             |

7590 09/15/2006

Monique A. Vander Molen  
Gardere Wynne Sewell LLP  
3000 Thanksgiving Tower  
1601 Elm Street, Suite 3000  
Dallas, TX 75201-4767

EXAMINER

FETTEROLF, BRANDON J

| ART UNIT | PAPER NUMBER |
|----------|--------------|
|----------|--------------|

1642

DATE MAILED: 09/15/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

**Advisory Action  
Before the Filing of an Appeal Brief**

Application No.

10/713,578

Applicant(s)

AWASTHI ET AL.

Examiner

Brandon J. Fetterolf, PhD

Art Unit

1642

**--The MAILING DATE of this communication appears on the cover sheet with the correspondence address --**

THE REPLY FILED 01 September 2006 FAILS TO PLACE THIS APPLICATION IN CONDITION FOR ALLOWANCE.

1. ☒ The reply was filed after a final rejection, but prior to or on the same day as filing a Notice of Appeal. To avoid abandonment of this application, applicant must timely file one of the following replies: (1) an amendment, affidavit, or other evidence, which places the application in condition for allowance; (2) a Notice of Appeal (with appeal fee) in compliance with 37 CFR 41.31; or (3) a Request for Continued Examination (RCE) in compliance with 37 CFR 1.114. The reply must be filed within one of the following time periods:

- a) ☐ The period for reply expires \_\_\_\_\_ months from the mailing date of the final rejection.  
b) ☒ The period for reply expires on: (1) the mailing date of this Advisory Action, or (2) the date set forth in the final rejection, whichever is later. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of the final rejection.  
Examiner Note: If box 1 is checked, check either box (a) or (b). ONLY CHECK BOX (b) WHEN THE FIRST REPLY WAS FILED WITHIN TWO MONTHS OF THE FINAL REJECTION. See MPEP 706.07(f).

Extensions of time may be obtained under 37 CFR 1.136(a). The date on which the petition under 37 CFR 1.136(a) and the appropriate extension fee have been filed is the date for purposes of determining the period of extension and the corresponding amount of the fee. The appropriate extension fee under 37 CFR 1.17(a) is calculated from: (1) the expiration date of the shortened statutory period for reply originally set in the final Office action; or (2) as set forth in (b) above, if checked. Any reply received by the Office later than three months after the mailing date of the final rejection, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**NOTICE OF APPEAL**

2. ☐ The Notice of Appeal was filed on \_\_\_\_\_. A brief in compliance with 37 CFR 41.37 must be filed within two months of the date of filing the Notice of Appeal (37 CFR 41.37(a)), or any extension thereof (37 CFR 41.37(e)), to avoid dismissal of the appeal. Since a Notice of Appeal has been filed, any reply must be filed within the time period set forth in 37 CFR 41.37(a).

**AMENDMENTS**

3. ☒ The proposed amendment(s) filed after a final rejection, but prior to the date of filing a brief, will not be entered because  
(a) ☒ They raise new issues that would require further consideration and/or search (see NOTE below);  
(b) ☐ They raise the issue of new matter (see NOTE below);  
(c) ☐ They are not deemed to place the application in better form for appeal by materially reducing or simplifying the issues for appeal; and/or  
(d) ☐ They present additional claims without canceling a corresponding number of finally rejected claims.

NOTE: \_\_\_\_\_. (See 37 CFR 1.116 and 41.33(a)).

4. ☐ The amendments are not in compliance with 37 CFR 1.121. See attached Notice of Non-Compliant Amendment (PTOL-324).  
5. ☐ Applicant's reply has overcome the following rejection(s): \_\_\_\_\_.  
6. ☐ Newly proposed or amended claim(s) \_\_\_\_\_ would be allowable if submitted in a separate, timely filed amendment canceling the non-allowable claim(s).  
7. ☒ For purposes of appeal, the proposed amendment(s): a) ☒ will not be entered, or b) ☐ will be entered and an explanation of how the new or amended claims would be rejected is provided below or appended.  
The status of the claim(s) is (or will be) as follows:  
Claim(s) allowed: \_\_\_\_\_.  
Claim(s) objected to: \_\_\_\_\_.  
Claim(s) rejected: 1-8 and 47.  
Claim(s) withdrawn from consideration: \_\_\_\_\_.

**AFFIDAVIT OR OTHER EVIDENCE**

8. ☐ The affidavit or other evidence filed after a final action, but before or on the date of filing a Notice of Appeal will not be entered because applicant failed to provide a showing of good and sufficient reasons why the affidavit or other evidence is necessary and was not earlier presented. See 37 CFR 1.116(e).  
9. ☐ The affidavit or other evidence filed after the date of filing a Notice of Appeal, but prior to the date of filing a brief, will not be entered because the affidavit or other evidence failed to overcome all rejections under appeal and/or appellant fails to provide a showing of good and sufficient reasons why it is necessary and was not earlier presented. See 37 CFR 41.33(d)(1).  
10. ☐ The affidavit or other evidence is entered. An explanation of the status of the claims after entry is below or attached.

**REQUEST FOR RECONSIDERATION/OTHER**

11. ☐ The request for reconsideration has been considered but does NOT place the application in condition for allowance because: \_\_\_\_\_.  
12. ☐ Note the attached Information Disclosure Statement(s). (PTO/SB/08) Paper No(s). \_\_\_\_\_.  
13. ☐ Other: \_\_\_\_\_.

***Response to the Amendment***

The Amendment filed on 09/01/2006 in response to the previous Final Office Action (6/28/2006) is acknowledged, but has not been entered. The Amendment has not been entered because it would require a new search of the prior art, as well as, new considerations with respect 35 U.S.C. 102 and 103.

Claims 1-52 are currently pending.

Claims 9-46 and 48-52 are withdrawn from consideration as being drawn to non-elected inventions.

Claim 1-8 and 47 are currently under consideration.

**The text of those sections of Title 35, U.S. Code not included in this action can be found in a prior Office Action.**

**Rejections Maintained:**

***Claim Rejections - 35 USC § 112***

The following is a quotation of the first paragraph of 35 U.S.C. 112:

The specification shall contain a written description of the invention, and of the manner and process of making and using it, in such full, clear, concise, and exact terms as to enable any person skilled in the art to which it pertains, or with which it is most nearly connected, to make and use the same and shall set forth the best mode contemplated by the inventor of carrying out his invention.

Claims 1-8 and 47 remain rejected under 35 U.S.C. 112, first paragraph, as failing to comply with the written description requirement. The claim(s) contains subject matter which was not described in the specification in such a way as to reasonably convey to one skilled in the relevant art that the inventor(s), at the time the application was filed, had possession of the claimed invention. THIS IS A NEW MATTER REJECTION.

Claims 1 and 47 have been amended to recite “[A] method of preparing a proteoliposome comprising the step of: contacting a liposome with an effective portion of RalBP1 in the presence of one or more toxic compounds to create a proteoliposome ....” However, a careful review of the specification, as originally filed, does not appear to have support for the limitation of “contacting a

Art Unit: 1642

liposome with an effective portion of RalBP1 in the presence of one or more toxic compounds to create a proteoliposome.” (Emphasis added) In the instant case, the specification clearly sets forth that a proteoliposome is a protein and lectin or glycol- or phospholipid combination (page 7, paragraph 0020). Moreover, the specification teaches a method of preparing a proteoliposome comprising the step of contacting a liposome with an effective portion of RLIP76 to create a proteoliposome, wherein the proteoliposome may be further added to a toxic compound (page 4, paragraph 0011). Regarding the preparation of the proteoliposome, the specification appears to suggest that the proteoliposome is first made, and then added to one or more toxic compounds which is different from what is presently claimed because the current claims imply that all of the ingredients, e.g., liposome, effective portion of RalBP1, and a toxic compound, are all present in “one pot” and are used to create the proteoliposome. Applicant is invited to point to clear support or specific examples of the claimed limitation in the specification as-filed or remove such amendatory language in response to this action.

In response to this amendment, Applicants assert that amended Claims 1 and 47 claim a method “comprising the steps of contacting a liposome with an effective portion of RalBP1 to create a proteoliposome, wherein the proteoliposome is further added to one or more toxic compounds”.

In the instant case, as Applicant’s arguments appear to be solely drawn to the amended claims which have not been entered, such arguments have not been considered.

Therefore, Claims 1-8 and 47 remain rejected under 35 U.S.C. 112, first paragraph, as failing to comply with the written description requirement.

Therefore, No claim is allowed.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Brandon J. Fetterolf, PhD whose telephone number is (571)-272-2919. The examiner can normally be reached on Monday through Friday from 7:30 to 4:30.

If attempts to reach the examiner by telephone are unsuccessful, the examiner’s supervisor, Jeff Siew can be reached on 571-272-0787. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Art Unit: 1642

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

Brandon J Fetterolf, PhD  
Patent Examiner  
Art Unit 1642

BF

  
**JEFFREY SIEW**  
SUPERVISORY PATENT EXAMINER